

## **REMARKS**

This reply is responsive to the Non-Final Office Action mailed February 23, 2010 (the “Office Action”). Claims 4, 6–13, and 18–24 are pending. Claims 4, 6–11, and 20 are amended. Support for the claim amendments can be found in the specification and claims as originally filed. No new matter is presented. Claims 13, 18, and 21–24 are withdrawn from consideration. Applicant respectfully requests rejoinder of the withdrawn claims upon allowance of independent claim 4. Applicant respectfully requests reconsideration of the patent application in light of the following remarks.

### ***Claim Objections***

Claim 11 was objected to as it recited “R<sub>6</sub>” whereas it should have stated --R<sup>6</sup>--. Claim 11 has been amended to correct this minor informality.

### ***Enablement — 35 U.S.C. § 112, first paragraph***

Claims 16 and 17 were rejected under 35 U.S.C. § 112, first paragraph, for alleged lack of enablement. Claims 16 and 17 have been canceled, thereby rendering this ground of rejection moot.

### ***Indefiniteness — 35 U.S.C. § 112, second paragraph***

Claim 4 was rejected as being allegedly unclear as it “recites what is excluded and thus does not clearly define what is within applicant’s invention.” No further analysis was provided showing precisely why the language of claim 4 was allegedly indefinite. Applicant respectfully notes that the Office Action has failed to point out why claim 4 is indefinite. To the extent that the examiner relies on *In re Schechter*, 98 USPQ 144 (CCPA 1953) to suggest that all negative limitations are indefinite, Applicant respectfully notes that *Schechter* is among the “older cases [that] were critical of negative limitations because they tended to define the invention in terms of what the invention was not, rather than pointing out the invention.” See M.P.E.P. § 2173.05(i). But “[t]he current view of the courts is that there is nothing inherently ambiguous or uncertain about a negative limitation.” *Id.* Indeed, negative limitations have been upheld over indefiniteness challenges in numerous cases. *Id.* (citing *In re Wakefield*, 422 F.2d 897, 899 (CCPA 1970); *In re Barr*, 444 F.2d 588 (CCPA 1971)). The Patent Office Board of Appeals has recognized as much. *Ex Parte Hradcovsky*, 214 USPQ 554, 555 (PTO Bd App 1982) (There is no indefiniteness in defining the amount of polycrystalline lead superoxide in terms of a negative limitation).

Claims 5, 10, and 16–17 have been canceled, thereby rendering moot the rejection of these claims as being indefinite.

***Obviousness — 35 U.S.C. § 103***

Claims 4, 6-9, 11, 12, 16, and 17 were rejected under 35 U.S.C. § 103 as being obvious over U.S. Patent Application No. 2001/0039286 (“Dinnell”) and WO 03/037862 (“Maruyama”). Applicant has amended the pending claims to include recitations that are not disclosed in the cited references. Specifically, the presently claimed compounds require cyano in the A position and hydrogen in the B position. Neither of the cited references, either alone or in combination, discloses or suggests the presently claimed subject matter.

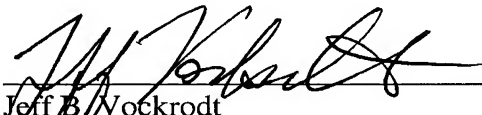
***Conclusion***

In view of the above remarks, early notification of a favorable consideration and an indication of allowance of all claims is respectfully requested. If the Examiner has any questions relating to this response, or the application in general, she is respectfully requested to contact the undersigned so that prosecution of this application may be expedited.

Respectfully submitted,  
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